

FREDERICK COUNTY PLANNING COMMISSION

March 13, 2019

TITLE: **Kinna Property
Lots 2-5 and Remainder**

FILE NUMBER: **M-2734, AP 19061 (APFO N/A, FRO 19062)**

REQUEST: **Agricultural Cluster Concept Plan Approval**
The Applicant is requesting Concept Plan approval for a 4-lot Agricultural Cluster subdivision on a 114 acre parcel.

PROJECT INFORMATION:

ADDRESS/LOCATION: Located on the south side of Cap Stine Road, north of Manor Woods Road, between Route 15 south and Ballenger Creek Pike

TAX MAP/PARCEL: Map 85, Parcel 56

COMP. PLAN: Agricultural/Rural and Natural Resource

ZONING: Agricultural

PLANNING REGION: Adamstown

WATER/SEWER: No Planned Service

APPLICANT/REPRESENTATIVES:

APPLICANT: Cap Stine, LLC / Jim Remsberg

OWNER: Cap Stine, LLC / Jim Remsberg

SURVEYOR/ENGINEER: R.F. Gauss & Associates, Inc.

ARCHITECT: N/A

ATTORNEY: N/A

STAFF: Craig Terry, Planner II

RECOMMENDATION: Conditional Approval

ATTACHMENTS:

EXHIBIT 1- Concept Plan
Exhibit 2: Driveway Spacing Justification Letter

STAFF REPORT

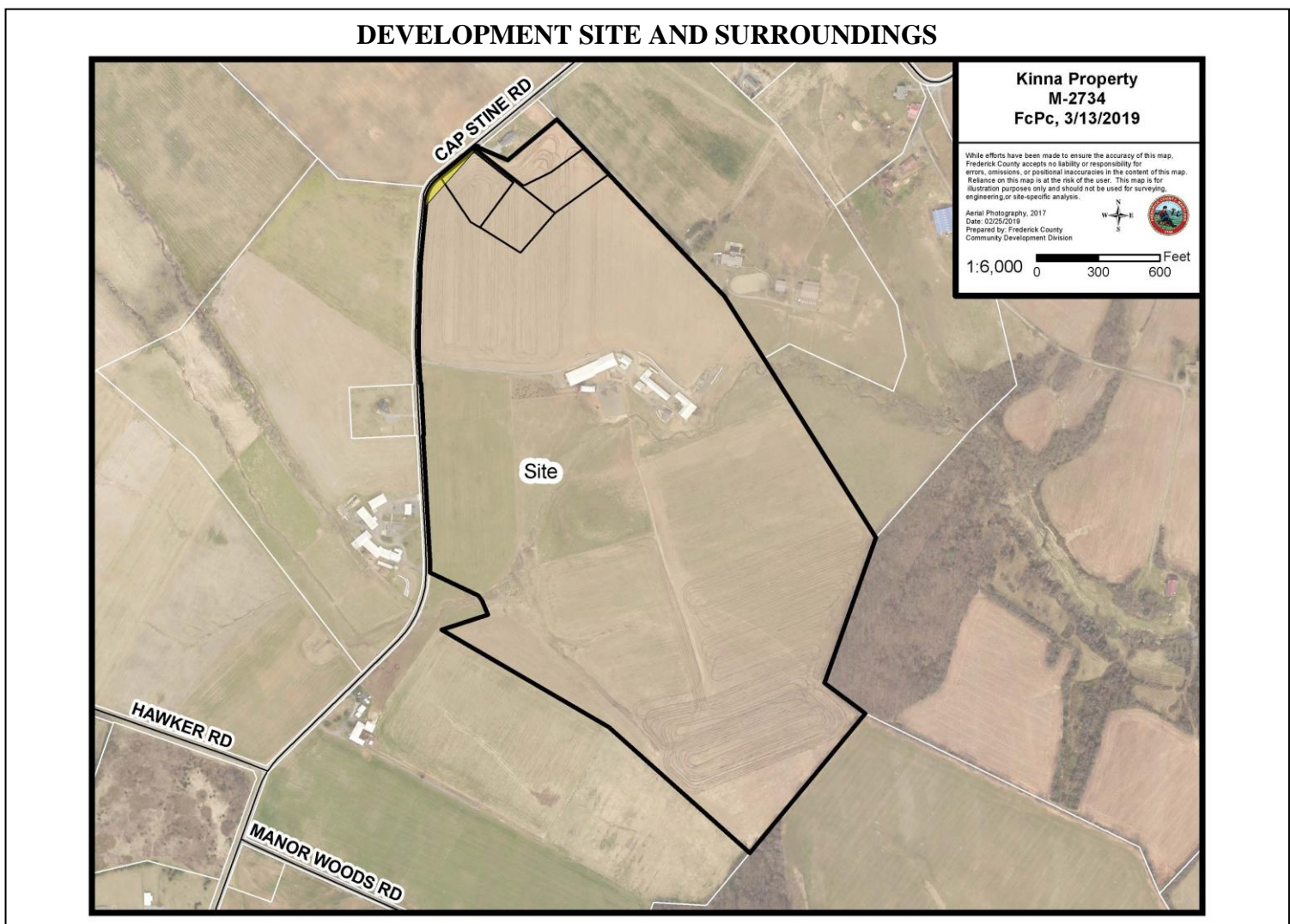
ISSUE

The Applicant is requesting Concept Plan approval for a 4 lot Agricultural Cluster subdivision on a 114 acre parcel.

BACKGROUND

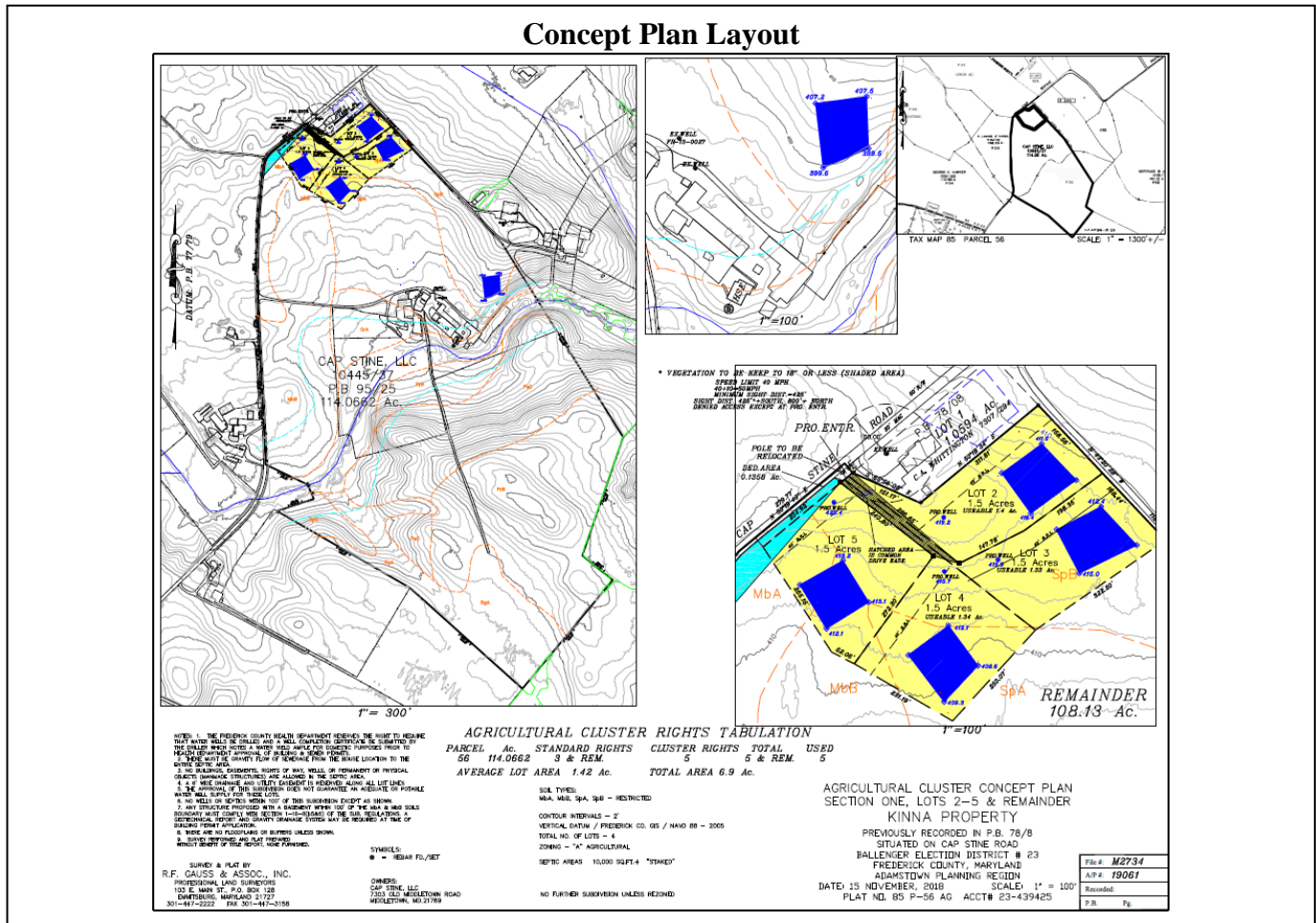
This property is zoned Agricultural (AG) and originally contained approximately 117 acres. Lot 1 was created on December 23, 2004 (Plat Book 78, Page 8) leaving the parcel at its current 114 acres. A "Subdivision Potential Letter" was issued to the owner February 23, 2015, finding the original parcel still retains the potential to subdivide up to two (2) lots (conventional) or up to four (4) lots if clustered. The Applicants proposal is to subdivide the four (4) clustered lots.

The proposed lots 2-5 will create the 2nd through 5th lots off the parcel since 1965 and therefore the proposal qualifies as a minor subdivision. The new lots will 'cluster' with the existing Lot 1.



Existing Site Characteristics

The property contains approximately 114 acres and is primarily used for agricultural purposes; specifically raising crops, and serving as pasture land for cattle. There are several agricultural use type structures located near the center of the acreage. An unnamed creek bisects the property, flowing from west to east. A delineation of Flooding Soils is located along the both sides of the creek, as well as a couple of small areas of wetlands. The majority of the property is encumbered with Restricted Soils and Wet Soils.



ANALYSIS

A. Zoning Ordinance Requirements: § 1-19-7.300. AGRICULTURAL DISTRICT.

§1-19-7.300(B): The minimum lot size for single-family dwellings will be 40,000 square feet...

§1-19-7.300(C)(2)(c): Clustering Requirements. Minimum lot size, width and yard areas shall be as specified in the Agricultural District. Lot size shall average not more than 1.5 acres in size with no lots exceeding 2 acres. The Planning Commission shall have the authority to grant modifications to lot sizes based on percolation and other Health Department requirements.

All of the proposed lots meet the minimum 40,000 sq. ft. lot size requirement. The proposed minimum lot width (100 feet) and yard areas (40 foot front yard, 30 foot rear yard, and 10 foot side yard) meet Agricultural District requirements in accordance with §1-19-6.100 Design Requirements of the Zoning Ordinance. The proposed lots are all 1.5 acres in size. The average lot size, including the previously divided Lot 1, comes to a 1.42 acre average. This meets the lot size criteria under §1-19-7.300(C)(2)(c) of the Zoning Ordinance.

§1-19-7.300(C)(2)(d): *A minor subdivision of 3 lots will be permitted to be subdivided on an original tract of land 25 acres or less...On an original tract of land containing more than 25 acres, the Planning Commission may allow 1 lot in addition to those allowed on lesser tracts for each additional 50 acres or part thereof above the first 25 acres...*

This parcel contains 114 acres. Under the cluster provisions, up to 5 lots can be proposed to be subdivided from the property (3 conventional + 2 cluster lots = 5). One lot has been previously subdivided, leaving the potential for 4 more lots. All of the parcel's subdivision potential will be utilized under this application and no further subdivision will be permitted.

§1-19-7.300(C)(1): *Clustering: Purpose and intent.*

(a) *To encourage the conservation of farmland in the Agricultural Zoning District by planning the residential development allowed in the zone to provide for the best obtainable siting, access and location of lots on a tract.*

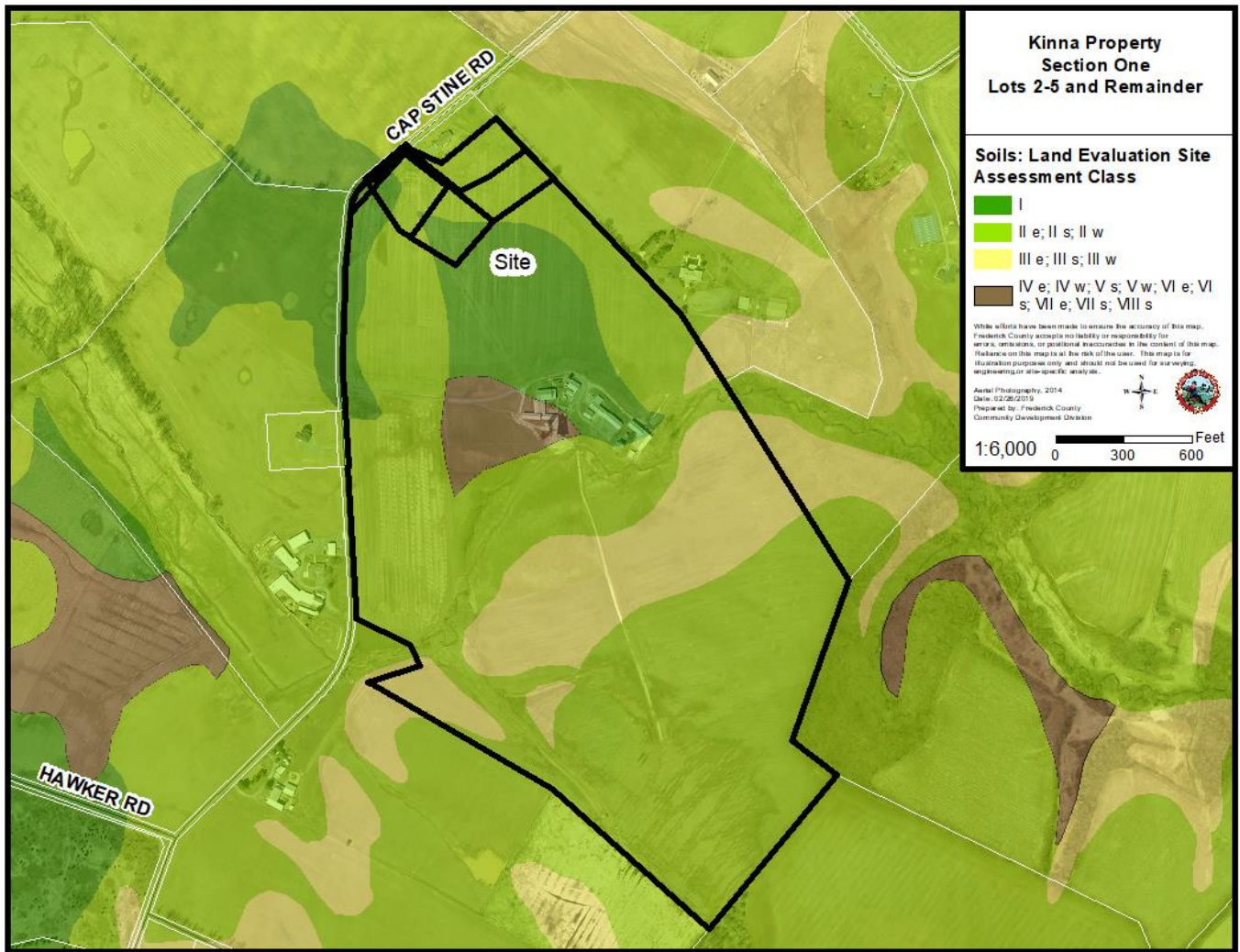
(b) *To provide for a well-planned development while minimizing the use of prime agricultural land.*

§1-19-7.300(C)(3): *Procedures:*

(b) *The Planning Commission will have final approval over the location and layout of the proposed clustering of lots. The Planning Commission shall consider the following when reviewing Concept Plans.*

1. *Soils. The cluster plan should minimize the use of the higher quality soils (class I, II and III as designated in the soils classification study) and maximize the use of steeper sloped areas, areas of poorer soils and areas which are otherwise less productive for agricultural uses.*

2. *Surrounding land use and zoning. The cluster plan shall consider the existing land uses and zoning in the vicinity. Generally, new lots which are adjacent to existing development or residential zoning are preferred to creating an isolated cluster of new houses.*



The proposed 4 lot subdivision is situated along the northern border of the property. The 114 acre parcel mainly consists of Class I and II prime agricultural soils, with some smaller areas of Class III and Class IV. The proposed lots are located within Class II (SpB & MbB) soils, with Lots 4 & 5 also being located within Class I soils (SpA & MbA). The remainder of the acreage contains a mix of Class I – IV.

Though there are lesser classified soils on the parcel, the proposed lot layout creates less of an impact on the existing farm operations. If the proposed lots were to be located in the Class III or IV soils, it would place residential structures in the middle of a large farming operation, dividing usable crop and pasture land for the access that would be required.

Zoning Ordinance Requirements Findings/Conclusions: The proposed subdivision will meet all Zoning Ordinance requirements if the FcPc determines that the design meets the Ag Cluster provisions.

ZONING / COMPREHENSIVE PLAN



B. SUBDIVISION REGULATION REQUIREMENTS

1. **Land Requirements §1-16-217 (A):** *The land use pattern of the Comprehensive Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.*

The subject property has an Agricultural/Rural Comprehensive Plan land use designation (see map above). The proposed land use and subdivision design complies with the Comprehensive Plan and will meet Zoning Ordinance requirements if the FcPc determines that the design meets the Ag Cluster provisions.

2. **Land Requirements §1-16-217 (B):** *The subdivision design shall take advantage of the uniqueness of the site reflected by topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.*

The site design takes advantage of the site's topography, wooded areas, water bodies, and adjoining subdivisions and land uses. The overall parcel contains an existing stream, flooding and wet soils, as well as wetlands. The area of the proposed subdivision does not contain unique topography, forest, or water bodies. Lots 4 & 5 are within 100 feet of a wet soils boundary, which will require a geotechnical report at the time of building permit application if houses with basements are proposed. The proposed subdivision is located as near to residential lots as allowed by driveway spacing requirements and is situated so as to avoid the existing environmental features and their buffers.

3. **Preliminary Plan, Required Information §1-16-72 (B)(19)(a & b):** *Soil types: (a) Soils type(s) information shall be provided and appropriate boundaries shown on the plan. In the event that "wet soils" are located on or within 100 feet of a proposed residential subdivision, a soils delineation report shall be prepared by a licensed soil scientist or professional engineer registered in the State of Maryland....*

Wet soils (MbB and MbA) are located within 100 feet of Lots 4 & 5. A geotechnical report will be required at the time of building permit application if houses with basements are proposed.

Road Access Requirements. Public Facilities §1-16-12 (B)(3)(a): *For minor subdivisions; A 16-foot travelway width shall be the normal minimum standard...*

The proposed lots will access Cap Stine Road, which is designated a Local roadway on the Comprehensive Plan, and has a 20 foot wide travelway which meets the criteria for a minor subdivision. The 50 foot wide required right-of-way has already been dedicated along the frontage of existing Lot 1, and will be further dedicated along the frontage of the proposed Lots 2-5.

Access to Cap Stine Road will be via a common driveway. Notes will be required on the final plat indicating that the lot owners shall be responsible for maintaining the common driveway. The common driveway must be constructed prior to lot recordation in accordance with §1-16-109(D)(8).

Sight distance for the proposed common driveway was initially 25 feet short of meeting the 425 foot requirement. As a solution, the Applicants have proposed a 'vegetation restriction' easement along the curve in Cap Stine Road. The easement proposes that no vegetation over 18 inches high will be planted; e.g., no corn will be planted in the turn that would seasonally obscure the required sight distance. If acceptable to the Planning Commission, this easement will need to be recorded and noted on the plat prior to final plat recordation.

The proposed common driveway is 40 feet from the existing driveway serving Lot 1. As per the Entrance Spacing policy, the proposed driveway must receive a modification approval from the Planning Commission. Planning Commission approval is required for entrance spacing on local, rural roadways with common driveways of 32-74' separation. The applicant is proposing to re-locate the existing utility pole for the common access (pole shown below).



Cap Stine Road looking west from Lot 1 driveway. The subject property is on the left side of the photo.



Cap Stine Road looking east from the curve. The subject property is on the right side of the photo



Cap stine Road Looking east, past curve. The subject property is on the right side of the photo.

- 4. Lot Size and Shape. Panhandle Lots §1-16-219 (C)(2):** *Panhandle lots may be approved by modification of the Planning Commission in major subdivisions only when it is determined by the Commission that “excellence of design” will be achieved or that such lots are inaccessible to the road due to odd shape and/or topographical constraints. In each case, the Planning Commission will determine “excellence of design” based on the spatial relationship of the panhandle lot to other lots and the public road. Only physical design criteria such as odd shape and road inaccessibility, topography, existing utilities, proposed and existing well and septic constraints (Health Department criteria) and natural or man-made features shall be used by the Planning Commission in granting modifications for panhandle lots in major subdivisions.*

Lots 2, 3 and 4 are designed as panhandle lots. Since this is a minor subdivision, a modification for the panhandle designed is not required by the Code. Moreover, utilizing panhandle lots in combination with fronting lots is a preferred design configuration for Agricultural Cluster subdivisions.

- 5. Water and Sewer Facilities. Public Facilities §1-16-12 (C):** *The proposed subdivision shall be disapproved unless each building lot has been approved for individual and/or community sewerage and water facilities by the Health Department.*

The property has a water and sewer classification of No Planned Service and must utilize private wells and septic systems. The percolation tests will be performed after the approval of this concept plan. Wells must be drilled prior to lot recordation.

Subdivision Regulation Requirements Findings/Conclusions: The project will meet all Subdivision Regulation requirements once all agency comments and conditions are met.

C. OTHER APPLICABLE REGULATIONS

- 1. Stormwater Management – Chapter 1-15.2:** Stormwater management will be provided in accordance with the Maryland SWM Act of 2007. Stormwater management will be addressed with future plan submittals.
- 2. APFO – Chapter 1-20:** This subdivision is a minor subdivision and is not subject to APFO requirements.
- 3. Forest Resource Ordinance – Chapter 1-21:** The subdivision is subject to FRO. A Combined Preliminary/Final Forest Conservation Plan has been submitted and is currently under review. The area of the proposed lots does not contain forest. The method for providing the afforestation requirement (20% of the subdivision area) will be determined as the project moves forward.

Summary of Agency Comments

<i>Other Agency or Ordinance Requirements</i>	<i>Comment</i>
<i>Development Review Engineering (PWDR):</i>	Conditional Approval. Stormwater management, road frontage improvements, common drive construction, etc. to be addressed with future plans.
<i>Development Review Planning:</i>	Hold. Must meet all agency and FcPc comments and conditions.
<i>State Highway Administration (SHA):</i>	N/A
<i>Div. of Utilities and Solid Waste Mngt. (DUSWM):</i>	N/A
<i>Health Dept.</i>	Hold. Proposed wells and septs need to be staked, lots field checked, soil evaluated and perk tested during restricted season.
<i>Office of Life Safety</i>	N/A
<i>Traffic Engineering (DRTE)</i>	Conditional Approval. Planning Commission must approve 40' driveway spacing. Sight distance has been demonstrated for the proposed access with the proposed vegetative restriction easement maintained as described.
<i>Historic Preservation</i>	N/A

RECOMMENDATION

If the Planning Commission finds that the proposed subdivision meets the Ag Cluster provisions of the Zoning Ordinance, finds that the vegetative restriction easement is appropriate for obtaining safe sight distance, and grants the entrance spacing modification request, then Staff has no objection to the conditional approval of the Concept Plan.

Based upon the findings, conclusions, and modifications as presented in this staff report the application meets or will meet all applicable Subdivision, Zoning, APFO, and FRO requirements once the following modification requests are granted and conditions met:

Planning Commission approval of the following modification requests from the Applicant:

1. A modification for common driveway spacing of 40' from the existing Lot 1 driveway.
2. A vegetative restriction easement for obtaining safe sight distance.

Staff-proposed conditions of approval:

1. The Applicant shall comply with all Staff and agency comments through the completion of the plan.
2. Concept Plan approval shall become null and void at the end of one (1) year from the date of FcPc approval unless a preliminary plan or Combined Preliminary/Final Plat is submitted for approval within this one year approval period.
3. A 'vegetative restriction' easement to maintain plantings no higher than 18 inches in order to comply with sight distance requirements shall be recorded prior to final plat recordation.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission **APPROVE M-2734 (AP 19061) with conditions** and modifications as listed in the staff report for the proposed Kinna Property, Lots 2-5 and Remainder Agricultural Cluster Concept Plan, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.